

1992

Steven V. Summers v. Third District Court : Brief of Appellant

Utah Court of Appeals

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Jan Graham; Attorney General; Attorney for Appellee.

Steven V. Summers; Pro Se.

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DOCKET NO. 920884-CA

IN THE UTAH COURT OF APPEALS

STEVEN V. SUMMERS,)	
)	
Plaintiff,)	
)	Priority No. 15
vs.)	
)	Case no: 920884-CA
THIRD DISTRICT COURT,)	
)	Case No:
Defendant.)	

BRIEF OF APPELLANT

Appeal from a decision of the Third District Court,
Salt Lake County, State of Utah
Honorable Timothy Hansen Presiding

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Utah Court of Appeals

JUN 14 1994

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STEVEN V. SUMMERS,)
)
 Plaintiff,)
)
 vs.)
) D.Ct. 920884-CA
 THIRD DISTRICT COURT,)
) Case No:
 Defendant.)

Appeal from a decision of the Third District Court,
Salt Lake County, State of Utah
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The Utah Court of Appeals, pursuant to Utah Code Ann. § § 78-2a-3(f) and Utah R. App. P. 3., has jurisdiction to review a final decision from a district court of the State of Utah.

1. Whether Compulsory Process would Allow the Court to Conduct a Hearing in the Absence of Material Witnesses.

2. Whether Appellant was Accorded Compulsory Process.
3. Whether Appellant's Fine Was Excessive.

STATEMENT OF THE CASE

A. Nature of the Case

This is an action against Third District Court Judge Timothy Hansen wherein Appellant alleges he was denied compulsory due process when the trial judge conducted a hearing revoking Appellant's probationary status without permitting Appellant the right to call certain witnesses in his behalf.

B. Statement of the Facts

On February 18, 1992, Appellant entered a plea of guilty to attempted aggravated assault before the Honorable Timothy Hansen. On March 30, 1992, Appellant was sentenced and subsequently granted probation on October 19, 1992, which probation was later revoked after a hearing held on July 27, 1993. The Order revoking Appellant's probation was entered July 29, 1993, from which he now appeals.

Prior to the hearing date, Appellant, while incarcerated at the Salt Lake County Jail, and acting pro se, sought the attendance of several witnesses at his hearing. Specifically, Appellant sought to have subpoenaed Robert Leggat, Director of the First Step House, Robert Simmons, Psychologist, Sherrie Paton, Psychologist, and Mr. Vigil, Head of Security. (See Addendum A.) Instead of allowing Appellant additional time to obtain process over these witnesses, the trial court went ahead with the proceeding. Thereafter, Appellant's probation was revoked at the

hearing and he received the maximum fine and jail sentence to run consecutive to any other sentence.

SUMMARY OF THE ARGUMENT

The trial court improperly rule that Appellant's subpoena requests were untimely. In addition, the trial court refused to continue Appellant's probationary hearing. This refusal, coupled with the trial court's refusal to compel certain witnesses to testify on Appellant's behalf prejudiced the Appellant at his hearing.

In addition, the trial court's denial of Appellant's request to have certain witnesses testify on his behalf violated Appellant's compulsory process rights.

Finally, the fine imposed upon the Appellant did not take into consideration Appellant's financial status nor his indigent status.

ARGUMENTS

I. WHETHER COMPULSORY PROCESS WOULD ALLOW THE COURT TO CONDUCT A HEARING IN THE ABSENCE OF MATERIAL WITNESSES

Prior to Appellant's probation revocation hearing, Appellant, while incarcerated at the Salt Lake County Jail, and acting pro se, sought the attendance of several witnesses at his hearing. The trial court ruled that his subpoena requests were untimely and denied Appellant's request. In addition, the trial court refused to continue the matter and refused to compel the

witnesses to testify. Instead of allowing Appellant additional time for a later hearing date, the trial court proceeded with the hearing. As a result of denying Appellant request to subpoena witnesses, Appellant's probation hearing was prejudiced. It should be beyond cavil that in a criminal proceeding, a defendant should be permitted to request and be permitted to subpoena witnesses to testify in his or her behalf. See United States v. Begay, (10th Cir. 1991) (constitution requires criminal defendant be given an opportunity to present evidence that is relevant, material, and favorable to defense). If and when this right is thwarted because a trial court will not subpoena certain witnesses, as here, then the adversarial process breaks down and the proceeding becomes nothing more than a one-sided process. Appellant, in essence was denied the right to prove that he had not violated his conditions of probation at his revocation hearing. See, e.g., United States v. Holland, 850 F.2d 1048, 1050-51 (5th Cir. 1988).

II. WHETHER APPELLANT WAS ACCORDED COMPULSORY PROCESS

Prior to the time of Appellant's hearing, the trial court should have granted Appellant request to subpoena certain witnesses to testify in his behalf. However, the trial court ruled that Appellant's request was untimely and denied said request.


III. WHETHER APPELLANT'S FINES WERE EXCESSIVE

At the sentencing phase of Appellant's hearing, Appellant was given the maximum fine permitted by the court. This excessive fine did not take into consideration Appellant's income, indigent status, nor any other relevant financial information.

CONCLUSION

Based upon the foregoing Appellant should be granted the relief requested.

DATED this 15 day of June, 1994.


Steven V. Summers
Litigant pro se

CERTIFICATE OF SERVICE

I hereby certify that four true and correct copies of the foregoing **APPELLANT'S BRIEF** was **HAND-DELIVERED**, postage prepaid this 15th day of June, 1994 to:

Jan Graham
Attorney General
236 State Capitol
SLC, Utah 84114


Steven V. Summers
Litigant Pro se

STEVEN V. SUMMERS
Defendant Pro Se
Section 7-D
Salt Lake County Jail
450 South 3rd East
Salt Lake City, Utah 84111

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

IN RE: STATE V. STEVEN V. SUMMERS
CASE NO. _____

JG. T.R. HANSON

NOTICE OF
SUBPOENAS :
NEEDED FOR
EVIDENTIARY
HEARING
7-29-93 2:00 PM

DEFENDANT, acting in Pro Se, hereby Notices this Court that the defendant intends to use the testimony of the following staff of the First Step House in his defense to the allegations of violation of district court supervision. Statutory authority for issuance of the Subpoena, and Subpoena duces Tecum is found in Rule 45 R.C.P. Utah Code Annotated, (1953, as amend.)

TO BE SUBPOINED :

1. Robert Leggat, Director First Step House, 411 No. Grant Street, Salt Lake City, Utah 84116
- To bring all records of client transactions and all house rules, concerning the defendant hereinabove.
2. Robert Simmons, psychologist, to bring

any and all papers authorizing him to act in an
and other function of the "Board of Advisors"
of the First Step House. (3 cert copies to be provided)

3. Sherrie Paton, psychologist, to bring
any and all house rules which allegedly
prohibit the calling of any staff member
by any resident therein, (3 copies to be provided)

4. Mr. Vigil, head of security, to bring
any and all incident reports or orders
concerning the defendant, and to include
all dates of entry into program and any
termination date he has available. (3 copies to be provided)

5. The above witnesses are to be served at 411 No. Grant,
St. S.L.C., UT, 84111
DATED AND SIGNED: July 17, 1993


STEVEN V. SUMMERS

CERTIFICATE OF SERVICE

" I HEREBY CERTIFY THAT I mailed a copy of
the foregoing notice of subpoenas to;

Judge T.R. Hanson
THIRD DISTRICT COURT
240 East 400 South
Salt Lake City, Ut. 84111

SALT LAKE COUNTY ATTYS OFF
ATT: BUD ELLIET, ESQ.
250 East 400 So., 3rd Fl
Salt Lake City, Ut. 84111

on 7-17-93

by: 
S.V. SUMMERS

placed in U.S. mailbox
at 7th floor SLC Co T on
7-17-93 with note to S.V. D.